

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1704

Introduced by Assembly Member Hagman

February 13, 2014

An act to amend Section 12389 of the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as amended, Hagman. Underwritten title companies: escrow.

Existing law authorizes an underwritten title company, as defined, to engage in the escrow business and act as an escrow agent as long as it fulfills specified requirements. *Existing law requires an underwritten title company to obtain a license from the Insurance Commissioner by filing an application with the commissioner and paying a filing fee of \$354.*

~~This bill would make technical, nonsubstantive changes to those provisions.~~

This bill would authorize the commissioner to license an underwritten title company to engage in escrow business in all counties of this state with one application. This bill would also require an underwritten title company seeking to expand its escrow business to pay a one-time fee of \$449 or the reasonable regulatory cost, whichever is less.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12389 of the Insurance Code is amended to read:

12389. (a) An underwritten title company as defined in Section 12340.5, which shall be a stock corporation, may engage in the business of preparing title searches, title reports, title examinations, or certificates or abstracts of title, upon the basis of which a title insurer writes title policies, provided that:

(1) Only domestic corporations may be licensed under this section and an underwritten title company, as defined in Section 12340.5, shall not become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) ~~(A)~~ Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth as follows:

Aggregate number of documents
recorded and documents filed in the
offices of the county recorders in the
preceding calendar year in all counties
where the company is licensed to transact
business.

Number of documents	Amount of required minimum net worth
Less than 50,000	\$ 75,000
50,000 to 100,000	120,000
100,000 to 500,000	200,000
500,000 to 1,000,000	300,000
1,000,000 or more	400,000

“Net worth” is defined as the excess of assets over all liabilities and required reserves. It may carry as an asset the actual cost of its title plant provided the value ascribed to that asset shall not exceed the aggregate value of all other assets.

~~(B) Where~~

Where a title plant of an underwritten title company is not being currently maintained, the asset value of the plant shall not exceed its asset value as determined in the preceding paragraph as of the

date to which that plant is currently maintained, less one-tenth thereof for each succeeding year or part of the succeeding year that the plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and ~~(i)~~ (A) the owner of the plant continues regularly to obtain and index title record data to the plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of the data, or ~~(ii)~~ (B) the owner of the plant is a participant, in an arrangement for joint use of a title plant system regularly maintained in any format, provided the owner is contractually entitled to receive a copy of the title record data contained in the jointly used title plant system during the period of the owner's participation therein, either periodically or upon termination of that participation, at a cost not to exceed the actual cost of duplication of the title record data.

~~(C) An~~

An underwritten title company at all times shall maintain current assets of at least ten thousand dollars (\$10,000) in excess of its current liabilities, as current assets and liabilities may be defined pursuant to regulations made by the commissioner. In making the regulations, the commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

~~(3) (A) An~~

(3) An underwritten title company shall obtain from the commissioner a license to transact its business. The license shall not be granted until the applicant conforms to the requirements of this section and all other provisions of this code specifically applicable to applicant. After issuance the holder shall continue to comply with the requirements as to its business set forth in this code, in the applicable rules and regulations of the commissioner and in the laws of this state.

~~(B) Any~~

Any underwritten title company who possesses, or is required to possess, a license pursuant to this section shall be subject as if an insurer to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code and shall be deemed to be subject to authorization by the Insurance

1 Commissioner within the meaning of subdivision (e) of Section
2 25100 of the Corporations Code.

3 ~~(C) The~~

4 *The* license may be obtained by filing an application on a form
5 prescribed by the commissioner accompanied by a filing fee of
6 three hundred fifty-four dollars (\$354). The license when issued
7 shall be for an indefinite term and shall expire with the termination
8 of the existence of the holder, subject to the annual renewal fee
9 imposed under Sections 12415 and 12416.

10 ~~(D) An~~

11 *An* underwritten title company seeking to extend its license to
12 an additional county shall pay a two hundred seven dollar (\$207)
13 fee for each additional county, and shall furnish to the
14 commissioner evidence, at least sufficient to meet the minimum
15 net worth requirements of paragraph (2), of its financial ability to
16 expand its business operation to include the additional county or
17 counties. *An underwritten title company seeking to expand its*
18 *escrow business pursuant to subdivision (c) shall pay a one-time*
19 *fee of four hundred forty-nine dollars (\$449) or the reasonable*
20 *regulatory cost, whichever is less.*

21 (4) (A) An underwritten title company shall furnish an audit to
22 the commissioner on the forms provided by the commissioner
23 annually, either on a calendar year basis on or before March 31
24 or, if approved in writing by the commissioner in respect to an
25 individual company, on a fiscal year basis on or before 90 days
26 after the end of the fiscal year. The time for furnishing an audit
27 required by this paragraph may be extended, for good cause shown,
28 on written approval of the commissioner for a period, not to exceed
29 60 days. Failure to submit an audit on time, or within the extended
30 time that the commissioner may grant, shall be grounds for an
31 order by the commissioner to accept no new business pursuant to
32 subdivision (d). The audits shall be private, except that a synopsis
33 of the balance sheet on a form prescribed by the commissioner
34 may be made available to the public.

35 (B) The audits shall be made in accordance with generally
36 accepted auditing standards by an independent certified public
37 accountant or independent licensed public accountant whose
38 certification or license is in good standing at the time of the
39 preparation. The fee for filing the audit shall be three hundred
40 thirteen dollars (\$313).

1 (C) The commissioner may refuse to accept an audit or order a
2 new audit for any of the following reasons:

3 (i) Adverse result in any proceeding before the California Board
4 of Accountancy affecting the auditor's license.

5 (ii) The auditor has an affiliation with the underwritten title
6 company or any of its officers or directors that would prevent his
7 or her reports on the company from being reasonably objective.

8 (iii) The auditor has suffered conviction of a misdemeanor or
9 felony based on his or her activities as an accountant.

10 (iv) Judgment adverse to the auditor in any civil action finding
11 him or her guilty of fraud, deceit, or misrepresentation in the
12 practice of his or her profession.

13 ~~(D) Any~~

14 Any company that fails to file an audit or other report on or before
15 the date it is due shall pay to the commissioner a penalty fee of
16 one hundred eighteen dollars (\$118) and on failure to pay that or
17 any other fee or file the audit required by this section shall forfeit
18 the privilege of accepting new business until the delinquency is
19 corrected.

20 (b) An underwritten title company may engage in the escrow
21 business and act as escrow agent, ~~as defined in Sections 17003~~
22 ~~and 17004 of the Financial Code~~, provided that:

23 (1) It shall maintain record of all receipts and disbursements of
24 escrow funds.

25 (2) It shall deposit seven thousand five hundred dollars (\$7,500)
26 for each county in which it transacts business in some form
27 permitted by Section 12351 with the commissioner who shall
28 immediately make a special deposit of that amount in the State
29 Treasury and that deposit shall be subject to Sections 12353, 12356,
30 12357, and 12358 and, as long as there are no claims against the
31 deposit, all interest and dividends thereon shall be paid to the
32 depositor. The deposit shall be for the security and protection of
33 persons having lawful claims against the depositor growing out of
34 escrow transactions with it. The deposit shall be maintained until
35 four years after all escrows handled by the depositor have been
36 closed.

37 (A) The commissioner may release the deposits prior to the
38 passage of the four-year period upon presentation of evidence
39 satisfactory to the commissioner of either a statutory merger of
40 the depositor into a licensee or certificate holder subject to the

1 jurisdiction of the commissioner, or a valid assumption agreement
2 under which all liability of the depositor stemming from escrow
3 transactions handled by it is assumed by a licensee or certificate
4 holder subject to the jurisdiction of the commissioner.

5 (B) With the foregoing exceptions, the deposit shall be returned
6 to the depositor or lawful successor in interest following the
7 four-year period, upon presentation of evidence satisfactory to the
8 commissioner that there are no claims against the deposit stemming
9 from escrow transactions handled by the depositor. If the
10 commissioner has evidence of one or more claims against the
11 depositor, and the depositor is not in conservatorship or liquidation,
12 the commissioner may interplead the deposit by special
13 endorsement to a court of competent jurisdiction for distribution
14 on the basis that claims against the depositor stemming from
15 escrow transactions handled by it have priority in the distribution
16 over other claims against the depositor.

17 (c) *An underwritten title company may be licensed by the*
18 *commissioner to engage in escrow business in all counties in this*
19 *state with one application.*

20 (e)

21 (d) The commissioner shall, whenever it appears necessary,
22 examine the business and affairs of a company licensed under this
23 section. All of these examinations shall be at the expense of the
24 company.

25 ~~(d)-(1)~~

26 (e) At any time that the commissioner determines, after notice
27 and hearing, that a company licensed under this section has
28 willfully failed to comply with a provision of this section, the
29 commissioner shall make his or her order prohibiting the company
30 from conducting its business for a period of not more than one
31 year.

32 ~~(2) Any~~

33 Any company violating the commissioner's order is subject to
34 seizure under Article 14 (commencing with Section 1010) of
35 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
36 may have the license revoked by the commissioner. A person
37 aiding and abetting a company in a violation of the commissioner's
38 order is guilty of a misdemeanor.

39 ~~(e) The~~

1 *The* purpose of this section is to maintain the solvency of the
2 companies subject to this section and to protect the public by
3 preventing fraud and requiring fair dealing. In order to carry out
4 these purposes, the commissioner may make reasonable rules and
5 regulations to govern the conduct of its business of companies
6 subject to this section.

7 ~~(f) The~~

8 *The* name under which each underwritten title company is
9 licensed shall at all times be an approved name. The fee for filing
10 an application for a change of name shall be one hundred eighteen
11 dollars (\$118). Each company shall be subject to the provisions
12 of Article 14 (commencing with Section 1010) and Article 14.5
13 (commencing with Section 1065.1) of Chapter 1 of Part 2 of
14 Division 1.

15 ~~(g) The~~

16 *The* rules and regulations shall be adopted, amended, or repealed
17 in accordance with the procedure provided in Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title
19 2 of the Government Code.

20 ~~(f) This section does not prohibit an underwritten title company~~
21 ~~from engaging in escrow activities in its counties of licensure on~~
22 ~~properties located outside this state if those activities do not violate~~
23 ~~the laws of that other state or country.~~